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ACTION IO-00

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| INFO | LOG-00 | NP-00 | AF-00 | AID-00 | AMAD-00 | CIAE-00 | DODE-00 |
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| | TEDE-00 | INR-00 | L-00 | NEA-00 | NSAE-00 | NSCE-00 | OIC-02 |
| | OPIC-01 | PER-00 | PRS-00 | P-00 | SP-00 | IRM-00 | SS-00 |
| | STR-00 | TEST-00 | TRSE-00 | USIE-00 | SA-00 | ECA-00 | PRM-00 |
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FM USMISSION GENEVA

TO SECSTATE WASHDC 1827

INFO USMISSION USUN NEW YORK

UNCLAS SECTION 01 OF 02 GENEVA 005200

STATE FOR IO/SHA, DRL/MLA/, L/HRR FOR BRANCATO

E.O. 12958: N/A

TAGS: PHUM, UNHRC-1

SUBJECT: FRENCH AMBASSADOR DISCUSSES NEW WORKING GROUP ON
ENFORCED DISAPPEARANCE

1. (SBU) SUMMARY: FRENCH PERMREP KESSEDJIAN MET WITH MISSION OFFICERS TO EXCHANGE IDEAS ON THE "WORKING GROUP ON A DRAFT LEGALLY BINDING NORMATIVE INSTRUMENT FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE (WGED)." FRANCE VIEWS THE WGED AS THE LAST PIECE IN THE PROCESS OF BRINGING AN END TO THE DEBATES OF THE LAST TEN-YEARS ON THE ISSUE OF
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ENFORCED DISAPPEARANCES. KESSEDJIAN PREDICTED THAT MANY PARTICIPANTS WOULD HAVE DIFFICULTIES DEFINING SUCH CONCEPTS AS VICTIMS' RIGHTS, IMPUNITY, REPARATION, AMNESTY, AND RETROACTIVITY, BUT EMPHASIZED THAT AGREEMENT ON THE SUBSTANCE HAD TO COME BEFORE DISCUSSION ON THE FORM OF THE FINAL INSTRUMENT. HE MADE A STRONG PLEA FOR FULL ENGAGEMENT BY THE USG SAYING THAT WITHOUT IT PROGRESS WOULD BE DIFFICULT.

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2. (U) ON DECEMBER 17, FRENCH AMBASSADOR BERNARD KESSEDJIAN HOSTED A BILATERAL LUNCH TO EXCHANGE VIEWS AND DISCUSS FRENCH INTEREST REGARDING THE "WORKING GROUP ON A DRAFT LEGALLY BINDING NORMATIVE INSTRUMENT FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE (WGED)." THE AMBASSADOR WAS JOINED BY HIS TWO HUMAN RIGHTS OFFICERS. THE MISSION WAS REPRESENTED BY THE POLITICAL SECTION CHIEF, LEGAL ADVISER, AND SENIOR HUMAN RIGHTS OFFICER.

3. (U) KESSEDJIAN BEGAN BY STATING THAT WHILE FRANCE HOPED TO BE ELECTED TO THE ROLE OF CHAIRMAN FOR THE WGED, HE KNEW THAT A DECISION WOULD HAVE TO WAIT UNTIL ITS FIRST MEETING ON JANUARY 6. NEVERTHELESS, FRANCE'S INTEREST STEMMED FROM A DESIRE TO MAKE A POSITIVE CONTRIBUTION BECAUSE OF ITS PAST ACTIVISM ON THE ISSUE (FRANCE HAS TRADITIONALLY SPONSORED THE CHR RESOLUTION ON ENFORCED DISAPPEARANCES). IN HIS OPINION,

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THE WGED WAS THE LAST PIECE IN THE PROCESS OF BRINGING AN END TO THE DEBATES OF THE LAST TEN-YEARS IN THE COMMISSION ON HUMAN RIGHTS (CHR). HE SAID THAT THE SUB-COMMISSION'S "DRAFT INTERNATIONAL CONVENTION ON THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE" PROVIDES "A" BUT NOT NECESSARILY "THE" ONLY POINT OF DEPARTURE FOR THE DISCUSSIONS THAT WILL TAKE PLACE IN THE WGED. HE ALSO EXPECTS THE WGED DISCUSSIONS TO DRAW FROM OTHER DOCUMENTS SUCH AS THE REPORTS OF INDEPENDENT EXPERT MANFRED NOVAK (AUSTRIA), PAST RESOLUTIONS, INPUT FROM NON-GOVERNMENTAL ORGANIZATIONS (NGOS), AND COMMENTS OF STATES. ADMITTING THAT PERHAPS THE SUB-COMMISSION TEXT WAS PROBABLY TOO AMBITIOUS, HE EXPECTED THE FINAL PRODUCT OF THE WGED TO BE NO MORE THAN A FEW PAGES, SUGGESTING ILLUSTRATIVELY 5-6 PAGES.

4. (U) AMBASSADOR KESSEDJIAN, IF ELECTED CHAIR, SAID HE WOULD CHALLENGE THE WGED TO FOCUS ON DEFINING THE CONCEPTS TO BE INCLUDED IN A BINDING NORMATIVE INSTRUMENT. HE PREDICTED THAT MANY PARTICIPANTS WOULD HAVE DIFFICULTIES IN REACHING CONSENSUS ON DEFINITIONS OF SUCH CONCEPTS AS VICTIMS' RIGHTS, IMPUNITY, REPARATION, AMNESTY, AND RETROACTIVITY. HE REPEATEDLY EMPHASIZED THAT THE DISCUSSION ON THE FORM OF THE FINAL INSTRUMENT (E.G. CONVENTION, TREATY, OPTIONAL PROTOCOL, ETC.) SHOULD NOT TAKE PLACE UNTIL THERE WAS UNANIMOUS AGREEMENT ON THE SUBSTANCE. HE ANTICIPATED THAT IT WOULD TAKE THE WGEF APPROXIMATELY FOUR YEARS TO COMPLETE NEGOTIATIONS ON THE DRAFT OF A FINAL INSTRUMENT. HE HOPED THAT THE NEGOTIATIONS COULD UNFOLD WITH A MINIMUM OF BRACKETED TEXT AND SAID THAT DELEGATIONS WOULD BE ADMONISHED TO AVOID "HORSE-TRADING" ON BRACKETED LANGUAGE, GIVEN THE

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SERIOUS NATURE OF THE SUBJECT MATTER.

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5. (U) KESSEDJIAN MADE A STRONG PLEA FOR FULL ENGAGEMENT BY THE USG SAYING THAT WITHOUT OUR CONSTRUCTIVE PARTICIPATION AND THAT OF OTHER KEY DELEGATIONS, SUCH AS SOME OF THE LARGE ASIAN COUNTRIES, IT WOULD BE DIFFICULT TO MAKE PROGRESS IN THE WGED. HE MADE EMPHATICALLY CLEAR HIS VISION OF A FINAL INSTRUMENT THAT IS MORE THAN A POLITICAL DOCUMENT (SUCH AS THE EXISTING DECLARATION ON THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCES). HIS GOAL WOULD BE TO PRODUCE AN INSTRUMENT "THAT MOVES THE ISSUE FORWARD WITH TEETH, BUT AT THE SAME TIME IS A REASONABLE DOCUMENT." WHAT IS NECESSARY IS AN INSTRUMENT THAT SANCTIONS ABUSERS, HE SAID. HE AGREED WITH THE COMMENT THAT THE LATIN COUNTRIES (GRULAC) WILL BE LOOKING FOR AN INSTRUMENT THAT IS STRONGER THAN WHAT HAS ALREADY BEEN ACHIEVED IN THE INTER-AMERICAN CONVENTION ON THE FORCED DISAPPEARANCE OF PERSONS.

6. (U) IN RESPONSE TO COMMENTS FROM U.S. REPRESENTATIVES, KESSEDJIAN ACKNOWLEDGED THAT MANY STATES WERE CONCERNED ABOUT THE PROLIFERATION OF INSTRUMENTS (AND HOW A NEW INSTRUMENT ON THIS SUBJECT WOULD RELATE TO THE ROME STATUTE THAT ESTABLISHED THE INTERNATIONAL CRIMINAL COURT). HE ALSO ALLUDED TO OTHER ISSUES THAT COULD POSE SERIOUS NEGOTIATING CHALLENGES, SUCH AS ESTABLISHING CULPABILITY FOR INDIVIDUAL

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TAGS: PHUM, UNHRC-1

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ENFORCED DISAPPEARANCE

VERSUS COLLECTIVE AUTHORSHIP OF AN ENFORCED DISAPPEARANCE,
AND WHETHER THE FINAL INSTRUMENT SHOULD EXTEND TO NON-STATE
ACTORS. ON THE LATTER POINT, HE INTIMATED HIS STRONG DOUBT
THAT NON-STATE ACTORS WOULD BE BROUGHT WITHIN THE SCOPE OF
SUCH AN INSTRUMENT AND SUGGESTED THAT NEGOTIATORS SHOULD NOT
ALLOW THEMSELVES TO BE LONG DIVERTED BY THE DESIRE OF OTHERS
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